

ESTTA Tracking number: **ESTTA669994**

Filing date: **05/01/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061135
Party	Defendant Weems Industries, Inc.
Correspondence Address	WEEMS INDUSTRIES INC 6281 N GATEWAY DR, MARION, IA 52302 UNITED STATES
Submission	Answer
Filer's Name	Brian J. Laurenzo
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Date	05/01/2015
Attachments	Answer to Petition for Cancellation.pdf(1367551 bytes)

MATTOON RURAL KING SUPPLY, INC.,)	Cancellation No.:	92061135
)		
)	Registration No.:	3765628
Petitioner,)		
)	Filing Date:	May 26, 2009
v.)		
)	Registration Date:	March 23, 2010
WEEMS INDUSTRIES, INC. d/b/a)		
LEGACY MANUFACTURING)		
COMPANY,)		
)		
Registrant.)		
)		

1. Respondent lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 1.
2. Respondent admits the allegations of Paragraph 2.
3. Respondent admits that Petitioner sells and markets a Tool Shed line of air hoses, but denies that the body of the Tool Shed air hose is bright yellow.
4. Respondent lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 4.
5. Respondent admits that it sent a cease and desist letter dated January 16, 2015 to Petitioner asserting Petitioner's use of chartreuse infringes its United States Trademark Registration No. 3765628 covering the color chartreuse as applied to the body of air hoses, but denies Petitioner's air hose is bright yellow, United States Trademark

No. 3765628 covers the use of bright green on air hoses, and that it asserted either against Petitioner.

6. Respondent admits the allegations of Paragraph 6.

7. Respondent admits that it applied for and was refused registration on the Principal Register in 2009-2010. Respondent denies that the mark is non-distinctive.

8. Respondent denies the allegations of Paragraph 8.

9. Respondent denies the allegations of Paragraph 9.

10. Respondent denies that the continued existence of United States Registration No. 3765628 will be a continued source of damage and injury to Petitioner. Respondent denies that it will attempt to prevent Petitioner from using a bright yellow color in connection with its Tool Shed line of air hoses based upon Registration No. 3765628. Respondent admits that it will attempt to prevent Petitioner from using its chartreuse-colored air hose in connection with its Tool Shed line of air hoses.

AFFIRMATIVE DEFENSES

11. Petitioner has acted with unclean hands and therefore relief should be barred.

12. Respondent reserves the right to assert affirmative defenses in accordance with the evidence and pursuant to applicable law and rules of procedure.

WHEREFORE, Respondent prays for an order dismissing the cancellation petition in its entirety.

Date 5/1/15

Respectfully submitted,

By Brian J. Laurenzo

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing has been mailed in a postage prepaid envelope deposited in a box under the custody of the U.S. Postal Service this 1st day of May, 2015 to Frank B. Janoski, Esq. and Eric D. Block, Esq., Lewis Rise LLC, Box IP Department, 600 Washington Avenue, Suite 2500, St. Louis, Missouri 63101.

Cayle McFadden

CERTIFICATE OF FILING

I hereby certify that this correspondence is being filed electronically on-line as a PDF document filing form to the Assistant Commissioner for Trademarks this 1st day of May, 2015.

Cayle McFadden